

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 15**

**New Orleans, Louisiana**

**ENTERGY MISSISSIPPI, INC.  
Employer/Petitioner**

**and**

**Case No. 15-UC-149**

**INTERNATIONAL BROTHERHOOD OF ELECTRICAL  
WORKERS, LOCALS 605 AND 985, AFL-CIO  
Unions**

**SUPPLEMENTAL DECISION AND ORDER**

This case involves a petition filed by Entergy Mississippi, Inc. (Employer) seeking to clarify a unit of employees represented by the International Brotherhood of Electrical Workers, Local 605 and 985, AFL-CIO (Unions) by the exclusion of dispatchers from the unit on the basis that they are supervisors within the meaning of the Act. As fully discussed below, I reaffirm an earlier decision that the Employer has failed to sustain its burden of proving that its dispatchers are supervisors within the meaning of the Act, and will order that the petition be dismissed.

On January 21, 1939, the Unions were certified as the collective-bargaining representative for the following unit:

All permanent electrical employees engaged in operation, meter reading, maintenance, construction, storeroom and production employed on a monthly and hourly basis in the following classifications: Lineman 1st Class, Senior Lineman, Lineman Trainee, Crane Operator, Senior Cable Splicer, Cable Splicer, Cable Splicer Trainee, Head Tree Trimmer, Tree Trimmer, T&E Mechanic, T&E Trainee, Senior SC&M Mechanic, SC&M Mechanic, SC&M Trainee, Relayman, Relay Trainee, System Relayman, System Dispatcher, Substation Operator A, Assistant System Dispatcher, System Communication Man, Communication Man, Communication Trainee, System Meterman, Electric Meterman, Apprentice Electric Meterman, Polyphase Meter Installer-Jackson, Apprentice Polyphase Meter Installer-Jackson, Utilityman, Serviceman, Troublemaker, Apprentice Serviceman-Outside Jackson, Customer Service Dispatcher, Service Dispatcher-Greenville, Distribution Dispatcher-Jackson, Assistant Distribution Dispatcher, Carpenter-Painter, Helper, Laborer, Bus Operator-Jackson, Special Meter Reader-Jackson, Meter Reader, Storekeeper; excluding Superintendents, General Foremen, Foremen, Managers, all clerical workers and persons whose primary duties are clerical, and all classifications not listed above.

On August 11, 2003, the Employer filed the instant petition, seeking to exclude the dispatcher job classifications from the bargaining unit on the basis that the individuals holding the positions are supervisors under the Act. The initial hearing in this matter was held on September 17-19, October 7, 8, 15 and 16, and November 11 and 12, 2003. On January 29, 2004, the undersigned issued a decision finding that the dispatcher job classifications (namely the System Dispatcher, Substation Operator A, Assistant System Dispatcher, Customer Service Dispatcher, Service Dispatcher-Greenville, Distribution Dispatcher-Jackson, Assistant Distribution Dispatcher, and Distribution Operator<sup>1</sup>) were not supervisory positions within the meaning of Section 2(11) of the Act, and ordered dismissal of the petition. The Employer filed a request for review and, on April 20, 2004, the Board granted the Employer's request for review.

On September 30, 2006, the Board remanded this matter to the undersigned and directed me to take further appropriate action consistent with its decisions in *Oakwood Healthcare, Inc.*, 348 NLRB No. 37 (2006), *Croft Metals, Inc.*, 348 NLRB No. 38 (2006), and *Golden Crest Health Care Center*, 348 NLRB No. 39 (2006). On October 11, 2006, I requested that the Employer and Unions submit position statements addressing how the *Oakwood Healthcare* decision impacted my January 29, 2004 decision and order. The Employer, in its position statement filed November 1, 2006, argued that due process demanded that the record be reopened for the taking of additional evidence. Contrarily, the Unions, in their position statement also filed November 1, 2006, argued that the decisions in the *Oakwood Healthcare* trilogy of cases reinforced my January 24, 2004 Order. On November 17, 2006, I issued a Notice of Representation Hearing in which I scheduled the record to be reopened on December 11, 2006. The record reopened on December 11, 2006 and closed on December 12, 2006.

I have carefully considered the issues on remand, the cumulative record (as developed at the initial hearing and the reopened hearing) and the briefs submitted by the parties in concluding that the

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<sup>1</sup> In a side agreement executed by the parties on September 16, 2002, a dispatcher classification called Distribution Operator was created.

petition should be dismissed because the Employer has failed to meet its burden that its dispatchers are supervisors within the meaning of the Act.

## **I. OVERVIEW OF CUMULATIVE RECORD EVIDENCE**

### **A. Overview of the Employer's Operation**

The Employer is an electric utility company that transmits and distributes electrical power throughout the State of Mississippi. The Employer is aligned into two operational groups: Transmission and Distribution. The Transmission Operations Group manages power that is obtained from generation facilities and delivers it to distribution substations. This group also constructs and maintains substations and over 2,800 miles of transmission lines. Operations Coordinators and Substation Maintenance Supervisors are the first line supervisors for bargaining unit field employees that work in this group. The Employer and the Unions recognize the Operations Coordinators and Substation Maintenance Supervisors as supervisory, non-bargaining unit positions.

The Transmission Operations Center (TOC), is part of the Transmission Operations Group. The TOC monitors all equipment and transmission lines utilized in the transmission of power from generators to various distribution substations. The TOC also monitors voltage loads and reacts to, and if necessary corrects, any changes in the power flow. The TOC has a Manager of Transmission Operations for Mississippi, which position is currently held by Duane Sistrunk. Sistrunk is commonly referred to as the TOC Manager. The Employer and Unions recognize the TOC Manager as a supervisory, non-bargaining unit position.

The Distribution Operations Group is responsible for the construction and maintenance of distribution facilities and substations throughout Mississippi. The Distribution Operations Center (DOC), monitors and controls the flow of electricity through distribution lines that run from the distribution substations to the customer. The DOC has a Manager of Distribution Dispatch, which position is currently held by John Scott. Scott is commonly referred to as the DOC Manager. The Employer and Unions recognize the DOC Manager as a supervisory, non-bargaining unit position.

The Employer has 14 networks located at various locations throughout Mississippi. The DOC services the networks by receiving customer calls concerning power outages and by restoring power to the customers as quickly as possible. Each network has a Network Manager and Operations Coordinator. The Operations Coordinators have primary oversight of the bargaining unit field employees and are responsible for prioritizing field employee job assignments and ensuring that each job assignment has the appropriate manpower. The Employer and Unions recognize the Network Manager and Operations Coordinator as supervisory, non-bargaining unit positions.

The Employer's Director of Distribution Operations, which position is currently held by Dennis Dawsey, acknowledged that the Employer does not have a written job description for its dispatchers. Nonetheless, Dawsey presented written job descriptions for Operations Coordinators at Entergy Louisiana, Incorporated (ELI) in Baton Rouge, a different company, and claimed that such descriptions depict the same functions that are performed by the Employer's dispatchers in Mississippi.

The cumulative record reflects that the Employer's dispatchers in the TOC and DOC basically perform the same functions.

#### **1. SCADA and AM/FM**

Dispatchers utilize the Supervisory Control and Data Acquisition ("SCADA") and Automated Mapping and Facilities Management ("AM/FM") systems in the performance of their jobs. SCADA is a computerized system that provides dispatchers with data concerning the load, voltage, and amps on breakers and circuits in the substations. SCADA sends an alarm to the dispatchers in the TOC and DOC when a circuit experiences a sudden change in voltage or when a breaker trips. Dispatchers then use the AM/FM computer application to get a visual map of the transmission and distribution lines throughout Mississippi. AM/FM monitors customers' calls regarding outages and predicts the device that has malfunctioned in the area of the outage. With the information provided by SCADA and AM/FM, the dispatchers use remote terminal units ("RTUs"),

which are connected to breakers and switches in substations, to remotely operate the affected breakers and switches. This begins the switching process.

## **2. Switching**

Dispatchers perform switching operations to alter the flow of electricity through the transmission and distribution systems. Switching is the sequential opening and closing of switches in the transmission and distribution system to isolate a section of power lines and to interrupt the flow of electricity so that field employees can perform routine maintenance or repair a section of line that has been damaged. Switching is also performed to restore the flow of electricity to a section of power lines that have been serviced or repaired. The dispatchers draft switching orders, which are step-by-step procedures to open and close switches, and relay the orders to field employees for execution.

Switching is performed in three scenarios: planned, contingent, and emergency. Planned switching is scheduled ahead of time and is usually performed in the context of maintenance or construction work that must be performed by field employees in substations or along transmission and distribution lines. The field employees assigned to perform the switching operation generally receive copies of the switching orders in advance of the operation from the Operations Coordinators in their respective networks and substation maintenance groups. Unlike planned switching, contingency switching is not scheduled ahead of time and is performed when planned switching orders must be modified or when unexpected trouble arises that must be addressed immediately. In contingency switching, the dispatchers dictate each step in the switching sequence to the field employees, and the field employees write down each step as dictated by the dispatcher. The field employees then read each step of the switching sequence to the dispatchers to ensure its accuracy. This is known as the Echo Protocol. Finally, emergency switching is performed in situations that require immediate action to prevent the loss of life or property. The switching may be performed without a written switching order, depending upon how busy the dispatchers are at the time of the emergency and the experience level of the field employees who are actually performing the switching

operation. In these situations, after life and property have been secured, dispatchers revert to contingency switching and prepare a written switching order.

All switching must be performed in accordance with the Employer's Distribution and Transmission Switching, Tagging and Clearance procedure, referred to herein as the Switching procedure. The evidence presented at the 2006 hearing reflects that the Switching procedure, which has been updated since 2003 and has an effective date of January 18, 2005, now provides for the Hand-off of Trunk Switching in Sections 1.1 and 6.0. The dispatchers hand-off switching when there is a total loss of communication between the DOC and the affected network, for safety critical reasons, or for major weather disturbances resulting in a black event in multiple areas. Section 1.3, Trunk Line Drawing, also contains color coded details outlining which circuits are DOC controlled and which are Field controlled. Section 3 defines Major Accounts as any group of people that manage customer accounts. Additionally, Section 3.5.8.4 provides that the retention period for tapes of radio and telephone switching conversations is a minimum of 3 years, and Section 3.8 provides for the retention of operational records for a minimum of 6 years.

### **3. Clearance Orders**

Dispatchers issue clearance orders in association with switching operations. A clearance order is a documentation process in which a unique number is assigned by the dispatchers and given to field employees signifying that there is no flow of electricity through a piece of equipment or line. Once the dispatchers issue the clearance order number, the field employees physically place a tag on the equipment to alert anyone with access to the breakers or switches that the equipment can not be operated without first contacting the TOC or the DOC. At the same time, the dispatchers in the TOC or DOC place an electronic tag on the breakers or switches in SCADA to alert anyone with access to SCADA that the device is de-energized. This is referred to as "hold-tagging" a piece of equipment or line.

### **4. Outage Restoration Updates**

Dispatchers communicate with the Entergy Business Center (“EBC”) regarding outages and the status of restoration efforts. The EBC houses the Employer’s customer relation representatives that service major account customers such as large commercial entities and hospitals. The dispatchers are trained to give priority status to restoring power to major account customers in outage situations, and at times, representatives in the EBC contact dispatchers for information as to when power will be restored to affected major account customers.

## **5. Network Overview Status**

Evidence presented at the 2006 hearing establishes that dispatchers manage the Network Overview Status (NOS) system. The NOS is a color coded system used to provide customers with the initial estimation of time it will take the Employer to restore their power in outage situations. The corresponding colors for the initial restoration time estimates are: green for less than two hours, yellow for between 2.5 and 8 hours, red for up to 2 days, and black for as long as 7 days.

## **6. Fatal Five Safety Rules**

The evidence at the 2006 hearing shows that in August 2006, the Employer rolled out its Fatal Five Safety Rules. The Employer distributes to its employees cards that contain the Fatal Five rules, which are: a) wear appropriate lifesaving PPE, b) follow Testing and Grounding rules, c) follow critical Switching, Tagging, and Clearance rules, d) follow Cover Up and Electrical Barrier Rules when working on energized conductors, and 5) follow Fall Protection rules. According to the Employer’s witness, Operations Coordinator William McCorkle, he regularly carries the card containing the Fatal Five rules in his pocket.

## **B. Duties of the Employer’s Dispatchers**

The Employer currently employs seventeen dispatchers at the DOC located in Jackson, Mississippi and six dispatchers at the TOC.

### **1. DOC Dispatchers**

Dispatchers, utilizing AM/FM and SCADA, have dispatch responsibility for the entire State of Mississippi on a 24/7 basis, overseeing more than 171 distribution substations and managing over 408,000 customers. Dispatchers work at either the outage management desk or the switching desk. Dispatchers performing outage management primarily do switching via SCADA. If they are not able to do the switching via SCADA, then they hand off the situation to the dispatchers assigned to the switching desk. The dispatchers assigned to the switching desk work with field employees that physically perform the switching on the affected equipment. The switching is performed according to the Employer's Switching procedure. Only the dispatchers that have been approved as a full level dispatcher are assigned to the switching desk and allowed to write switching orders. The dispatchers have the Distribution Operators Manual for reference in performing their job. This manual contains instructions on how dispatchers can access the TOIS analog application to review load data to determine how and when switching can be performed. The manual also instructs dispatchers on how to use the Distribution Switching Order Database. Dispatchers use the database to search for previously written switching orders that have not been executed, to create new switching orders for breaker-over-breaker and transformer-over-transformer switching operations, and to search for all completed switching orders.

## **2. TOC Dispatchers**

The dispatchers work 12-hour rotating shifts, 7:00 a.m. to 7:00 p.m. and 7:00 p.m. to 7:00 a.m. The dispatchers have authority to hold themselves over their shift or to call in additional dispatchers if necessary to manage the workload. Dispatchers in the TOC are the controlling authority for all switching, tagging and clearance performed on transmission equipment under their oversight. Like the dispatchers in the DOC, dispatchers in the TOC use SCADA and other computerized systems and applications in performing their duties, which involve outage management and switching. Since 1994, the dispatchers have utilized the Transmission Automated Outage Request System (TAORS) to manage planned outage requests. The dispatchers review the outage requests, which are usually received from employees in the Employer's construction and maintenance



departments, and determine if the request conflicts with any other planned outages. If not, the dispatcher then forwards the request to the System Operations Center (SOC) in Pine Bluff, Arkansas for approval. Once the outage request is approved, the dispatchers draft the switching order to accomplish the outage request. The dispatchers, using the Echo protocol, go through each step of the switching order with field employees, who are given their assignments in advance by substation supervisors. After the switching order is executed, the dispatchers issue a unique and confidential clearance number on the affected section of line or piece of equipment. The clearance number signifies to field employees that the electrical flow has been interrupted for the affected line or equipment and it is safe to be worked on. The field employees cannot begin working on the line or equipment until the dispatchers issue the clearance numbers.

## **II. Application of *Oakwood Healthcare* to the Dispatchers**

The Employer initially filed this petition to clarify the bargaining unit claiming its dispatchers are statutory supervisors in light of the United States Supreme Court's decision in *NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706 (2001). The Employer contends that the Supreme Court's ruling in *Kentucky River* and the Board's *Oakwood Healthcare* decision have effectively overruled *Mississippi Power*, and thus, its dispatchers should be viewed as statutory supervisors. Contrarily, the Unions contend that the Board's decision in *Mississippi Power* is consistent with the Board's decision in *Oakwood Healthcare* and is still dispositive of this case. I have carefully considered the contentions of the Employer and the Unions, and my determination in this matter is guided by the principles the Board set forth in the *Oakwood Healthcare* trilogy of cases.

Section 2(11) of the National Labor Relations Act, hereinafter "Act," defines the term "supervisor" as:

[A]ny individual having authority, in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the exercise of independent judgment.

This provision is to be read in the disjunctive and any of these enumerated powers is sufficient to confer supervisory status. *Kentucky River*, supra at 713. As the Supreme Court stated in *NLRB v. Health Care & Retirement Corp. of America*, 511 U.S. 571, 573-574 (1994):

[T]he statute requires the resolution of three questions; and each must be answered in the affirmative if an employee is to be deemed a supervisor. First, does the employee have the authority to engage in 1 of the 12 listed activities? Second, does the exercise of that authority require ‘the use of independent judgment’? Third, does the employee hold the authority ‘in the interest of the employer’?

In enforcing the Act, the Board does not construe supervisory status too broadly because a worker who is found to be a supervisor is denied rights which the Act is intended to protect. *Chevron Shipping Co.*, 317 NLRB 379, 385 (1995). Additionally, it is well established that the party alleging supervisory status has the burden of proving that it exists by a preponderance of the evidence. *Kentucky River*, supra at 711-712; *Oakwood Healthcare*, supra. This burden of establishing supervisory status must be met by detailed evidence, not conclusionary statements. *Golden Crest Healthcare Center*, supra at 7. The Employer in this matter alleges that its dispatchers assign and responsibly direct field employees and exercise independent judgment in doing so. I find that the Employer has failed to meet its burden. Accordingly, as discussed below, I find that the Employer’s dispatchers are not supervisors as defined by Section 2(11) of the Act.

#### **A. Assignment**

In *Oakwood Healthcare*, the Board defined assignment of work as “the act of designating an employee to a place (such as a location, department, or wing), appointing an employee to a time (such as a shift or overtime period), or giving significant overall duties, i.e., tasks, to an employee.” *Id.* at 4. The Board distinguished significant overall duties, such as when a charge nurse designates an LPN to be the person who will regularly administer medications to a patient or a group of patients, from an ad hoc instruction that an employee perform a discrete task, such as a charge nurse ordering an LPN to immediately give a sedative to a particular patient. The Board concluded that an ad hoc instruction is not an assignment. *Id.* at 5.

## **1. Place**

The cumulative record shows that DOC dispatchers routinely call-out field employees to work on trouble cases during normal business hours. As an aid in this process, each network provides the dispatchers with a daily schedule of which field employees are working in which areas, including which employees are designated as the troubleman for a particular day. If the dispatchers have any questions or need any clarifications on the daily schedule, they contact the networks. Otherwise, the dispatchers use the daily schedule to call out field employees to trouble areas. Once field employees are routed to the trouble locations, they work with the dispatchers until the trouble is cleared, even if it results in the field employees working after their regular shift has ended. If necessary, the dispatchers route the field employees from one trouble location to another. The dispatchers contact the networks for additional employees when there is more work than the designated troubleman can handle alone.

Dispatchers in the TOC also manage unplanned outages in the transmission system. If an unplanned outage occurs during normal business hours, the Employer's witness testified that dispatchers have authority to call field employees on the radio and re-direct them from their scheduled duties to the outage location. However, the Unions' witness, a dispatcher, testified that he calls the substation maintenance supervisor who, in turn, calls and routes field employees to the trouble location.

Overall, the evidence establishes that during normal business hours, the Employer's dispatchers route field employees to trouble locations during unplanned outages. However, such assignments are not permanent in nature and are either completely structured based on the Employer's designation of the troubleman or established call out lists. Accordingly, I find that, although the dispatchers inform field employees as to where they are to go, the evidence fails to establish that these "assignments" are made with any supervisory discretion as required by *Oakwood*.

## **2. Time**

The cumulative record evidence does not reflect that dispatchers assign field employees to regular shifts or reporting times. The evidence does reflect that in addition to calling out field employees during normal business hours, the Employer's dispatchers call-out field employees to work on trouble cases outside normal business hours. In these situations, the dispatchers follow the emergency call-out procedures set by the individual networks. In many instances, the dispatchers use a computer system, ECOS, to access a network's call-out procedures and lists. The various networks have different call out procedures for its field employees. For example, the Jackson network is called out by seniority. The Southaven network is called out first by territory and then by seniority within the given territory. The Clinton network is called out by territory and then by seniority. The Vicksburg and Grenada networks are called out by seniority. All other networks are called out by route and cycle or by seniority. Once the dispatchers call the appropriate field employee, the field employee can decline to respond to the trouble. The dispatchers have no authority to order the field employee to respond to the call. If an employee declines responding to the call, the dispatchers then call the next employee on the call out list and continue to call until an employee agrees to respond to the trouble case. If necessary, the dispatchers contact the appropriate on-call supervisor for assistance in getting a field employee to respond. Once the field employee agrees to respond to the trouble, the dispatchers route the employee to the trouble location. That employee then becomes the first responder.

The first responder investigates the source of the trouble and reports the information to the dispatchers. If the first responder determines that additional employees are needed to address the trouble, the first responder informs the dispatchers and the dispatchers, as required by the collective bargaining agreement between the Employer and the Unions, call out the necessary employees. The first responder may even specify which classifications of field employees are needed. In the event contingency switching is necessary, the dispatchers draft a switching order and, via use of a two-way radio or cell phone, dictate each step of the switching order to the first responder. The first responder records the switching sequence on a switching pad, and pursuant to the Employer's Echo protocol,

repeats each step of the switching order to the dispatchers to ensure he accurately recorded the order. In the event emergency switching is necessary to protect life or property and the dispatchers have not had the time to write a contingency switching order, the first responder may perform the switching sequence without a written switching order. Once the emergency situation has been resolved, the dispatchers draft a contingency switching order.

In the TOC, if an unplanned outage occurs after normal business hours, the dispatchers contact the on-call supervisor for the affected area. Then the on-call supervisor, pursuant to the Emergency and Planned Overtime procedure contained in the collective bargaining agreement, provides the dispatcher with a call-out list. The call-out lists are generated according to territory or seniority. Once the field employees are called out to the outage location, they generally work with the dispatchers until the trouble is cleared and even longer if additional outages are anticipated. This often results in overtime expenses for the Employer. The field employees can inform the dispatchers that they need to leave, and the dispatchers have no authority to order them to stay. In such situations, the dispatchers have to find other field employees who are willing to respond to the outages.

In sum, the evidence fails to establish that the Employer's dispatchers appoint field employees to a time. Rather, the evidence reflects that dispatchers can call field employees after normal business hours and request that the employees respond to an outage situation. The field employees can decline to respond, and the dispatchers have no authority to order the field employees to do so. Likewise, if a field employee is routed to an outage case during normal business hours and the situation is not resolved before the end of the field employees' shift, the dispatcher can request that the employee work overtime, but the dispatchers have no authority to require the employees to remain at work. As the Board noted in *Golden Crest*, it is well established "that the party seeking to establish supervisory authority must show that the putative supervisor has the ability to require that a certain action be taken; supervisory authority is not established where the putative supervisor has the authority merely to request that a certain action be taken." *Id.* at 4. Therefore, I find that the

Employer has failed to establish that its dispatchers possess the authority to assign field employees to work time or overtime period.

### **3. Significant Overall Duties**

The cumulative record reflects that the Employer's dispatchers do not assign daily overall duties to field employees. Rather, field employees receive their daily assignments from Network Managers and Operations Coordinators. Moreover, when dispatchers write switching orders for planned outages, the networks schedule the necessary field employees to execute the orders during planned switching operations. In unplanned outage situations, the Employer's dispatchers route field employees to specific outage locations and may request that field employees execute switching orders to restore power. The switching orders are best viewed as a series of discrete tasks that the dispatchers relay to the field employees to be performed in a sequential order. The Board has determined that such ad hoc assignments are not sufficient to confer supervisory status. *Croft Metals*, supra. Therefore, I find that the Employer has not established that its dispatchers assign significant overall duties to field employees.

### **4. Dispatchers Do Not Exercise Independent Judgment in Giving Assignments to Field Employees**

Having determined that the Employer's dispatchers inform field employees as to where they are to report, I am guided by the principle that any assignment must be done with independent judgment before it is considered to be supervisory under Section 2(11). In *Kentucky River*, the Supreme Court recognized that the term "independent judgment" is ambiguous with respect to the degree of discretion required for supervisory status. 532 U.S. 1867. The Court reasoned that it is within the Boards discretion to decide what degree of discretion qualifies for supervisory status. *Id.* Further, the Court held that "the degree of judgment that might ordinarily be required to conduct a particular task may be reduced below the statutory threshold by detailed orders and regulations issued by the employer." *Id.* The Court cited with approval the Board's decision in *Chevron Shipping Company*, supra, in which the Board concluded that licensed officers had great responsibilities but

their use of independent judgment and discretion was limited by the Employer's operating regulations and standing orders.

In accordance with *Kentucky River*, the Board, in *Oakwood Healthcare*, reasoned that for an individual to make a judgment, s/he must involve the "mental or intellectual process of forming an opinion or evaluation by discerning and comparing" data. *Id.* at 9. Further, the Board determined that for judgment to be independent, the actions of the individual making the judgment must be free of the control of others. The Board recognized that "actions form a spectrum between the extremes of completely free actions and completely controlled ones, and the degree of independence necessary to constitute a judgment as 'independent' under the Act lies somewhere in between these extremes." *Id.* Moreover, the Board reasoned that judgment is not independent if it is dictated or controlled by detailed instructions. However, "the mere existence of company policies does not eliminate independent judgment from decision-making if the policies allow for discretionary choices" that are not routine or clerical. *Id.* at 10. Thus, the question is whether the Employer has met its burden of proving by a preponderance of evidence that its dispatchers' make judgments when assigning field employees to outage locations AND that any such judgments are free of the control of others and not controlled by detailed instructions. Mere inferences or conclusory statements without supporting evidence is insufficient to establish supervisory status. *Sears, Roebuck & Co.*, 304 NLRB 193 (1991). I find that the Employer has failed to establish that its dispatchers make judgments that are free of the control of others and are not controlled by detailed instructions when routing field employees to outage locations.

First, the cumulative record does not reflect that the Employer's dispatchers form an opinion on or evaluate the skill level of field employees. Indeed, the Employer did not present any evidence that its dispatchers evaluate the job performance of field employees, and accordingly, the Employer failed to demonstrate that its dispatchers, when routing field employees to an outage location, perform an analysis of the field employees' skill set and level of proficiency at performing certain tasks. This stands in stark contrast to the evidence presented in *Oakwood Healthcare* where the charge nurses

analyzed the personality of the staff and patients and specific skills or abilities of the nursing staff in making assignments. *Id.* at 15. The Board determined that the charge nurses made assignments based on the skill, experience, and temperament of the nursing personnel and the acuity of the patients. The evidence in the instant case does not establish that the Employer's dispatchers exercise similar judgment based upon the skills possessed by particular field employees when they route field employees to outage locations.

Notwithstanding the total lack of evidence that its dispatchers make judgments based upon the skills possessed by particular field employees, the Employer broadly contends that if its dispatchers make decisions regarding assignment or direction based on any judgments, whether it be regarding the technical structure of the system or whether or not to assign field employees to address trouble cases, such judgments are supervisory because they are made independently and result in a supervisory function. The cumulative record does reflect that in multiple outage situations, the Employer's dispatchers prioritize trouble cases, and based upon the status of a case, dispatchers can route field employees from one trouble case to another trouble case. In prioritizing cases, the dispatchers consider the number of customers affected, the size of the customer, medical necessity, and the weather. The Employer asserts there are no standard operating procedures which instruct the dispatchers on how to prioritize cases.

In support of its contentions, the Employer elicited testimony from Thomas Fabre, a dispatch supervisor in Baton Rouge, Louisiana who does not work with the Employer, regarding a dispatch operator in Baton Rouge who made a decision in an outage situation to restore power to residential customers prior to restoring power to a chemical plant. According to Fabre, lightning knocked out an entire substation that provided electrical power for the chemical plant, and residential customers were also affected. Distribution field switching was required to restore power. The dispatch operator knew that it was not possible to restore power to the plant through distribution field switching because the distribution electrical grid could not carry the load necessary for the plant to operate, so the dispatch operator did what he could to restore power to the residential customers. I



note the evidence establishes that the dispatch operator did not have the necessary resources to restore power to the chemical plant, and thus, by default, the residential customers' power was restored. Further, I find that the outage situation in Baton Rouge, handled by a dispatch operator employed by a different company, has little relevance to how the Employer's dispatchers perform their jobs in Mississippi.

The Employer also argues that each outage is different and that the computer systems used by its dispatchers do not tell dispatchers how to prioritize situations. Certainly, AM/FM has enabled the Employer's dispatchers to be more knowledgeable and efficient in prioritizing trouble cases, and in conjunction with AM/FM and the other computer systems, the cumulative record reflects that the Employer trains its dispatchers to give priority restoration status to major account customers in multiple outage situations. Using the Employer's arguments, every employee who makes any decision independent of the Employer's immediate direction would be supervisors thereby effectively excluding almost all employees from the protection of the Act. Accordingly, I am not persuaded that the dispatchers exercise independent judgment and I do not find the Employer's arguments persuasive.

Further, even assuming that the Employer met its burden in establishing that dispatchers make judgments when routing field employees to outage locations, the evidence does not reflect that any such judgments are free of the control of others and are not, in fact, controlled by detailed instructions. The field employees receive their daily work assignments from Network Managers or Operations Coordinators, not dispatchers. Network managers, Operations Coordinators, or on-call supervisors make call-out lists, and the lists indicate which field employee can be called out and in what order. Dispatchers then merely use the prepared lists to call-out field employees both during and after normal business hours. If the outage occurs during normal business hours, the dispatchers may re-direct field employees from their scheduled work assignments to the outage locations. If the trouble occurs after normal business hours or on a weekend, dispatchers may call field employees

without contacting the Network Manager or Operations Coordinator since the dispatchers already have the call-out lists prepared by the supervisors.

In such situations, the evidence does not establish that the Employer's dispatchers, in routing field employees to an outage location, are required to use any meaningful exercise of discretion. In fact, the evidence shows that the dispatchers must follow the Employer's call-out procedure, and if they fail to do so, they are subject to discipline. Moreover, after a first responder has reported to an outage location and analyzed the trouble, the first responder, a field employee, informs the dispatcher if additional employees are needed, and if so, what job classifications are needed. Thus, the evidence suggests that the field employees actually have greater discretion than the dispatchers because it is the field employees who report to the site of an outage and determine what skills are needed and the number of employees needed to restore power. Essentially, the evidence establishes that the dispatchers' routing of field employees to an outage location is nothing more than a routine task. Therefore, I conclude that the Employer has failed to prove that its dispatchers exercise independent judgment in assigning field employees to outage locations.

## **B. Responsible Direction**

In *Oakwood Healthcare*, the Board interpreted the phrase "responsibly to direct" as follows: "If a person on the shop floor has men under him, and if that person decides what job shall be undertaken next or who shall do it, that person is a supervisor, provided that the direction is both 'responsible' and carried out with independent judgment." *Id.* at 7. Further, the Board determined that for direction to be "responsible," "the person directing and performing the oversight of the employee must be accountable for the performance of the task by the other such that some adverse consequence may befall the one providing the oversight if the tasks performed by the employee are not performed properly." *Id.* at 8. The Board reasoned that this concept of accountability "creates a clear distinction between those employees whose interests, in directing other employees' tasks, align with management from those whose interests, in directing other employees, is simply the completion of a certain task." *Id.* at 8. Therefore, utilizing the Board's analytical framework outlined in the

*Oakwood Healthcare* trilogy of cases, I will first consider whether the Employer has established that its dispatchers direct field employees within the meaning of Section 2(11), and if the answer is affirmative, I will then explore whether the Employer has established that its dispatchers are held accountable for their direction of field employees.

### **1. Dispatchers Direct Field Employees**

The Employer alleges that its dispatchers responsibly direct field employees by directing the employees in executing switching orders to restore power in outage situations. The evidence reflects that as part of their duties, the dispatchers are responsible for writing switching orders to restore power to affected customers. To perform the switching procedures, the dispatchers guide the field employees through each step of the switching order by using the Employer's Echo protocol. While it can be argued that the interaction of dispatchers with field employees during switching operations amounts to little more than an exchange of information or guidance, I find that the evidence is sufficient to establish that the dispatchers, in a minimal sense, direct field employees.

### **2. Dispatchers Are Not Held Accountable For Their Direction of Field Employees**

The Employer has failed to demonstrate that its dispatchers are accountable for their direction of field employees. The Employer's Discipline Policies and Procedures provide for four progressive steps including counseling, oral warnings, written warnings, and the application of consequences (withholding pay, demotion, temporary or permanent reassignment, suspension or termination). Any discipline issued, including counseling and oral warnings, should be documented and placed in the employee's departmental file.

The dispatchers and the field employees interact with each other by performing switching procedures during power outage situations. When a problem arises as a result of the switching, DOC Manager John Scott investigates the matter by listening to digitally recorded conversations between the dispatchers and the field employees, and Scott may also assemble an investigative team that includes all employees that can provide information about what happened during the switching

operation. Depending on the outcome of the investigation, the dispatchers, field employees, or both, may be disciplined for their share of fault. The Employer's dispatchers are not disciplined for the mistakes made by field employees, and field employees are not disciplined for the mistakes made by dispatchers. Neither DOC Manager Scott nor the dispatchers have authority to discipline field employees.

TOC Manager Duane Sistrunk presented a Switching Error Investigation Report for an incident on April 3, 2002 that involved an outage caused by the execution of a planned switching order when the dispatcher did not, prior to executing the order, confirm the system configuration, which had changed between the time the switching order was written and the time it was executed. The report indicates that the field employee contributed to the cause of the error by not catching the error in the written part of the switching order. Manager Sistrunk counseled the dispatcher for writing an incorrect switching order based in part on his failure to look at the construction-one line available to him that showed the correct configuration of the system when the switching order was executed. Sistrunk was not aware of the field employee being disciplined in any way. Sistrunk also presented a Switching Error/Incident Investigation Report dated May 29, 2003 for an outage that was caused when the dispatcher wrote the switching order incorrectly and it was executed by the field employee. The dispatcher received a counseling, but the field employee was not disciplined. Further, DOC Manager John Scott presented a Switching Error/Incident Investigation Process report for an outage caused on February 21, 2005 when the dispatcher opened the wrong breaker via SCADA and failed to immediately take responsibility for the error. The dispatcher received an oral warning. It was determined that the field employee did not contribute to the error and was not disciplined.

According to DOC Manager Scott, dispatchers are held accountable for how long outages last, partially because dispatchers are responsible for writing the switching orders. According to Scott, in evaluating whether an outage is too long, he considers the following: what steps did the dispatcher go through to mitigate it with field personnel; did the dispatcher give the field personnel additional help; and what was the dispatcher doing during that time frame to analyze other potential

places that could be switched to restore power to more customers during that time frame. According to Scott, if a dispatcher has dispatched field personnel to an outage situation and the field personnel do not respond to the dispatcher with information for an extended period of time, the manager disciplines the dispatcher if there's a time frame that the dispatcher does not act. If, however, it is the field personnel that refuses to respond to the dispatcher, the field personnel gets disciplined.

Once power has been restored in outage situations, only dispatchers input data into AM/FM to officially close out trouble cases. Dispatchers have to get some of the data from field employees to determine the proper "cause codes" for outage situations. The codes indicate the source of the outage, such as vegetation, animal, lightning, human error, and public inflicted damage (PID). Dispatchers are responsible for correcting closed cases that they close out with errors, particularly inaccurate cause codes. Cases closed out inaccurately affects the Employer's regulatory reporting to the Mississippi Public Service Commission for the reliability measures of the Formula Rate Plan, which determines how much revenue the Employer can recoup from customers, as well as how the Employer budgets future dollars to mitigate outages.

**a. TOC**

TOC Manager Duane Sistrunk presented a written reprimand dated July 3, 2006 that he issued to Dispatcher Rex Cannon for Cannon's failure to forward management instructions on how to safely handle reclosers on specific lines to the dispatcher that relieved him.

**b. DOC**

DOC Manager John Scott sponsored evidence of the following discipline he issued to dispatchers in the DOC:

**For failing to close out cases properly:**

(1) October 27, 2004, to Samuel Robinson for closing out case citing human error rather than vehicle;

(2) January 9, 2006, to Michael Carter for failing to provide comments when he used certain codes and for failing to select the Public Inflicted Damage (PID) button;

(3) February 1, 2006, to Michael Carter for closing out case to human error and not flagging it as a Public Inflicted Damage (PID); and

(4) October 23, 2006, to Michael Carter for closing out case to Scheduled Interruption instead of Information Only Case;

**For failing to accurately input information into the EOMS:**

(1) October 13, 2004, to David Hooper for failing to document in the remarks section how many phases were out and for failing to correct the “affected phases” column;

(2) October 13, 2004, to James Thompson for closing out a case to the incorrect “affected phases” and for failing to correct the “affected phases” column;

(3) October 13, 2004, to James Thompson for failing to click the drop down box on the “affected phases” column change to put in the correct code;

(4) October 25, 2004, to James Thompson for closing out cases to the incorrect “affected phases;”

(5) October 27, 2004, to Mark McCullough for failing to document how many phases were out and failing to correct the “affected phases” column; and

(6) November 18, 2004, to Grant Clifford for failing to document how many phases were out and for failing to correct his error by inputting the actual number of phases that were out.

The dispatchers’ failure to close out cases to the correct cause code can have a negative impact on the Employer’s ability to get rate increases with the Mississippi Public Services Commission.

**For switching errors:**

(1) March 26, 2004, a written reprimand to Chris Townsend for failing to follow the Switching and Tagging procedure and for failing to require a clearance order by placing a “hold card” on an open switch after field employees informed him they would begin their repairs; and

(2) January 23, 2006, a written reprimand to Jeff Sistrunk for opening the wrong breaker via SCADA during two separate planned switching operations.

**For other errors:**

(1) August 23, 2004, a written warning to Rontell Robinson for failing to complete mandated training in “Conflicts of Interest;”

(2) December 20, 2004, a “Poor Job Performance” report to Rontell Robinson for failing to log three substation alarms, to attend a number of safety meetings, to cover his dispatch area of responsibility, to record information provided to him by a troubleman and to properly close the case in AM/FM, to notify the EBC before opening a breaker, sleeping during a safety meeting, failing to report for extra shift duty, and failing to log switching activity;

(3) February 2, 2005, Irvin Breckenridge for failing to remove a troubleman from ECOS after the troubleman checked out of service;

(4) February 15, 2005, email to all dispatchers addressing their failure to modify the expected restoration time when the AM/FM alarm gave advanced notice that the initial projection time was about to expire;

(5) July 18, 2005, to Rontell Robinson for failing to post a URD failure report in AM/FM after reconfiguring a section of URD;

(6) August 22, 2005, to Jeff Sistrunk and Rontell Robinson for failing to cancel callbacks when a trouble case was cleared; and

(7) January 26, 2006, verbal warning to Rontell Robinson for failing to call the entire list of field employees during an outage after a field employee declined to report for an outage.

**c. Other Entergy companies**

The Employer, through Thomas Fabre - Manager of the Distribution Operations Center in Baton Rouge, Louisiana, which is part of a separate company, Entergy Louisiana, Incorporated (ELI), presented the following documents issued to dispatch operators in ELI:

a) a written warning dated June 15, 2005 to Kathy Prejean for failing to “follow normal DOC procedures by not directing the line crew properly during a restoration event;”

b) a suspension dated April 4, 2005 to Clifford Nelson for a safety violation by issuing “a switching order to close L11393 on a fault without isolating” and failing to “notify line crew of ongoing outage to 731F Pecue;” and

c) a suspension dated July 15, 2005 to Clifford Nelson for failing to “respond to messages left on his home answering machines as well as his cell phone for restoration duty during Tropical Storm Cindy” and failing to “properly assist and direct service personnel during the outage after repeated request from field personnel as well as management” by giving erroneous information and confusing directions. Also, the Employer, through William Reynolds - Manager of the Transmission Operations Center in Beaumont, Texas, which is part of Entergy Gulf States, Incorporated (EGSI), presented a suspension dated July 14, 2005 to Kenneth Knowles, an EGSI dispatcher, for failing to “follow proper switching procedures, resulting in a switching error on Line 97.”

Notably, the cumulative record does not reflect that the Employer’s dispatchers in Mississippi received any discipline for the job performance of field employees during outage situations.

The Employer contends that it has established that its dispatchers take corrective actions when field employees make errors in executing switching errors, such as opening or closing the wrong switch. The evidence does reveal that if field employees make errors during switching operations which result in additional outages, dispatchers write contingency switching orders and guide the employees through the switching orders for the restoration of power. However, the evidence does not show that the Employer’s dispatchers are subject to discipline when field employees make errors during the switching operations. Indeed, the Switching Error/Incident Investigation process reveals that when it is determined that field employees made errors during switching operations, only the field employees, not the dispatchers, are disciplined by their Network Managers or Operations Coordinators. For instance, field employee Ronny Taylor was disciplined by his supervisor and the network manager on September 21, 2004 when it was discovered that Taylor conducted personal business on company time when he was the designated outage person for his area. The dispatcher, who could not get Taylor to respond to a call, called other field employees in the area



to handle the outage in Taylor's absence. The network supervision learned of Taylor's absence either through the dispatcher calling the network manager or by some other means and the network manager disciplined Taylor. The dispatcher, if s/he reported the matter to the network manager, did not make any recommendation for discipline. Likewise, according to TOC Manager Duane Sistrunk, on an uncertain date prior to November 1, 2006, a field employee reported to an outage location without his rubber gloves. The employee informed the dispatcher that he would have to go home to get his gloves before he could execute the switching order. According to Sistrunk, the dispatcher called the field employee's supervisor to report the incident and the employee received a counseling for not having his personal protective equipment. Yet, the evidence firmly establishes that the Employer's dispatchers do not discipline and do not make recommendations for discipline of field employees.

Also, on March 20, 2006, the network manager and supervisor issued a written reprimand to Ronny Taylor for violating the Employer's Transmission and Distribution Safety Manual Rules by incorrectly executing a planned switching order. Instead of opening a disconnect switch, Taylor opened an air brake switch that was unrelated to the switching, which resulted in two energized circuits being tied together. The dispatcher caught Taylor's mistake using the Echo protocol, and after power was restored, reported the error to DOC Manager John Scott as is normally done. Scott contacted Taylor's network supervisor and arranged for a switching error investigation. All employees involved in the switching operation, including the dispatcher and Taylor, participated in the investigation by recounting what happened. The dispatcher was not disciplined.

On April 6, 2006, the network supervisor gave Mike Douglas a counseling and Arthur Bennett a verbal warning for a switching error in which a bypass switch was opened instead of a load disconnect switch. The dispatcher, after power was restored, reported the switching error to DOC Manager John Scott. Scott contacted the appropriate network supervisor and arranged for a switching error investigation. The investigation revealed that Douglas and Bennett deviated from the Echo protocol by implementing a step in the written switching order before clearing it with the dispatcher. The dispatcher and the field employees participated in the investigation by sharing their knowledge of

what happened. The dispatcher, who was not aware of the field employees' job performance history, did not make any recommendation for discipline. The record does not reflect that the dispatcher was disciplined in any way.

On July 12, 2006, while executing an annual maintenance switching order, the field employees turned off the incorrect scheme that caused a power outage to Georgia Pacific, a major account customer. The field employees recognized the error and reported it to the dispatcher, who then guided them through the steps to restore the service. The dispatcher reported the switching error to DOC Manager Scott, who in turn contacted the appropriate network supervisor to arrange an investigation into the switching error. The investigation revealed that the dispatcher gave the field employees the correct scheme number to turn off, but they turned off the wrong number. The network supervisors gave oral warnings to the field employees. The dispatcher was not disciplined in any way.

The record does contain an incident, on an undisclosed date, where Burgess, a field employee, while executing a contingency written switching order, closed a ground switch instead of opening a bus air brake switch, which created power outages at four substations. Burgess immediately informed the dispatcher that he grabbed the ground switch instead of the air brake switch. The dispatcher and Burgess then restored power in less than three minutes. TOC Manager Duane Sistrunk acknowledged that the Switching Error/Incident Investigation report indicates that the field employee operated the wrong device. Burgess was disciplined by his network manager, but the record does not indicate what form of discipline Burgess received. Sistrunk claims that he gave the dispatcher a coaching and counseling session, but he acknowledges that he did not place a memo in the dispatcher's personnel file concerning the dispatcher being counseled for the performance of the field employee. I am not convinced that the evidence establishes that the dispatcher actually received any degree of discipline for the tasks performed by the field employee since Sistrunk's claim is inconsistent with the requirements of the Employer's disciplinary policy.

As shown above, the cumulative record does not reflect that the Employer's dispatchers receive any discipline for the job performance of the field employees. Moreover, the dispatchers do not even make recommendations for discipline when field employees make errors in switching operations. Thus, in a real and practical sense, the evidence reflects that the Employer's dispatchers' interest in directing field employees is simply the completion of a task, and not managerial.

The record evidence does show that the Employer issued discipline to dispatchers for things such as entering incorrect outage cause codes in the computer system and failing to follow the Employer's Switching procedure. This evidence merely establishes that the dispatchers are accountable for the performance of their own duties, not the performance of field employees. The dispatchers were not disciplined for the direct action of field employees, but rather for their own shortcomings. Such evidence does not establish accountability on the dispatchers' part for the work performance of the field employees. Therefore, I find that the Employer has failed to establish that its dispatchers are held accountable for how field employees perform tasks during switching operations.

The Employer cites a Fifth Circuit decision involving another company in support of its arguments, *Entergy Gulf States, Inc. v. NLRB*, 253 F.3d 203 (5th Cir. 2001). Again, as I noted in my original Decision and Order in this matter, I find that there are distinct factual differences between *Entergy Gulf States* and the instant case. Unlike the Operations Coordinators (OCs) in *Entergy Gulf States*, the cumulative record does not reflect that the Employer's dispatchers have authority to reward or discipline field employees. Rather, the evidence reflects that they have no such authority. Likewise, the cumulative records shows that the Employer's dispatchers are not held accountable for the job performance of the field employees. Thus, I find that *Entergy Gulf States* is clearly distinguishable from the instant case.

Accordingly, I find that the Employer has failed to carry its burden of establishing that its dispatchers responsibly direct field employees within the meaning of Section 2(11).

### **3. Dispatchers Do Not Exercise Independent Judgment in Responsibly Directing Field Employees**

Since I have determined that the Employer failed to establish that its dispatchers responsibly direct field employees, an independent judgment analysis is not necessary. Nonetheless, assuming that the Employer was able to establish that its dispatchers have even a limited degree of accountability for the performance of field employees, the Employer has not met its burden to establish that its dispatchers use independent judgment in the responsible direction of field employees.

In *Croft Metals*, the Board noted that an employer must establish that a putative supervisor forms an opinion or evaluation by considering and weighing information in making decisions about responsibly directing employees in the performance of their duties. *Supra*. The Employer contends that in preparing switching orders, its dispatchers must decide how it will be done, who will do it, what will be accomplished and when it will be accomplished, including the specific order of the steps. Also, the Employer contends that its dispatchers must consider the scope of the potential outage, the number and type of customers affected, the potential duration of the outage, the available personnel to assist, the quickest and safest method to restore power, the order to restore power to customers, the load considerations, and the potential impact of performing the work on non-affected customers. Furthermore, the Employer contends that although manuals and procedures exist for many procedures performed by the dispatchers, the policies and manuals that guide the dispatchers in their decision making allows the dispatchers to make discretionary choices. According to DOC Manager John Scott, the Switching procedures do not tell dispatchers the following: what to switch, where to switch, where the capacity is in the system, how the system's currently configured, what's actually energized, what's actually de-energized, the location of any switches, capacity in the substations, voltage that is currently on the system, what the settings are on the relays for the protection schemes, or what type of protection scheme is being used in a particular station. The cumulative record

evidence reflects that such information is, however, provided to the dispatchers by computerized systems.

To support the Employer's contentions, TOC Manager Duane Sistrunk sponsored an email dated September 7, 2002 that he received from dispatcher Smith White explaining that during a switching operation, coils had burned up in a ring bus and the field employee making the repairs, who had reached his limit of working sixteen hours, had to take at least an eight hour break and then return to finish the repairs. According to Sistrunk, if there had been an immediate need for the coils to be replaced, White could have called in another field employee to do the work, but White decided that the repairs could wait until the field employee returned to finish the repairs after his eight hours of rest. Other than the unexplained sentence in the email itself, "Terry Lucas finished his work and will not need the line out Saturday or Sunday night," I note that the record does not reflect what factors White considered in deciding that the repairs could wait.

Manager Sistrunk also presented an email dated October 16, 2006 detailing an inquiry he received from the Systems Operation Center for analog values on a particular line. On September 26, 2006, Sistrunk notified supervisors of field employees that the analog values needed to be checked. On October 16, 2006, a dispatcher informed Sistrunk that he had routed field employees to look at the analog values since the employees were already in the areas, which had been the subject of the inquiry on September 26, 2006. Likewise, Sistrunk sponsored a TAORS printout referencing a planned switching operation that began on November 20, 2006. At the time the switching operation was to begin, the dispatcher did not have a field employee in place to perform the operation. The dispatcher initially called a field supervisor to get a field employee to perform the operation. After the field supervisor informed the dispatcher that he could not spare anyone, the dispatcher then contacted the field employee located closest to the area where the switching was to be performed and routed that employee to the switching location.

Despite the Employer's contentions, indubitably, the evidence reflects that switching operations must be performed within guidelines set by the Employer. The dispatchers, as the

controlling authority for switching operations, utilize SCADA, AM/FM, TAORS, TOIS, and the Distribution Operators Training Manual for switching scenarios, which greatly reduces any discretionary choices available to the dispatchers. The SCADA alarms notify the dispatchers when an outage/emergency situation exists. AM/FM shows the dispatchers the location of the outages and the location of field employees. TOIS shows the dispatchers how and when switching can be performed. The Switching procedure dictates how switching operations must be performed, and the Echo protocol dictates how the dispatchers must communicate the switching sequences to the field employees.

Nonetheless, even if the Employer was able to establish that its dispatchers make decisions by weighing information available to them, the record still fails to establish that any such decisions amount to responsible direction of field employees in the performance of their jobs. The very essence of the dispatchers' job require them to communicate with field employees during switching operations, but the evidence does not reflect that the Employer's dispatchers are accountable for how long it takes field employees to implement the switching orders or how well the field employees implement the switching orders. Rather, the evidence reflects that the dispatchers are not disciplined if field employees perform their tasks poorly.

### **III. INTERACTION AMONGST DISPATCHERS AND SECONDARY INDICIA**

The Employer, in conclusory fashion, contends that its dispatchers possess indicia of supervisory status because dispatchers determine what duties they themselves are to perform, make recommendations regarding when dispatchers themselves are ready for advancement, effectively recommend the promotion of other dispatchers, authorize their own overtime and call in their fellow dispatchers for overtime, decide their own schedules and vacations, and are subject to only minimal day to day control by their supervisors. The cumulative record does reflect that in some situations, such as in a major storm, dispatchers can hold themselves over for another shift and, if necessary, call in additional dispatchers to assist with restoring power to outage areas. Additionally, dispatchers may contact the on-call supervisors for the networks and request that the supervisors assume dispatch

responsibilities for their respective networks. In such situations, the network supervisors may decide to hold all network field employees on duty until the storm clears. According to the DOC Manager, dispatchers can hold themselves over on overtime or call in additional dispatchers without notifying him in advance. The evidence shows, however, that the dispatchers exercise the authority when there is more work than they can handle and only in outage situations. Moreover, after the dispatchers hold themselves over or call in additional dispatchers, they notify the DOC Manager.

The cumulative record also reflects that dispatchers mentor and provide on-the-job training for new dispatchers and make recommendations to the DOC Manager for the promotion of newly trained dispatchers. According to the DOC Manager, he defers one hundred percent to the recommendations provided by the dispatchers, but he does make his own observations of the dispatchers in training, checks with other local offices that may have had difficulty with the dispatchers, and administers a test made by him to the dispatchers recommended for promotion to the next level of competency. The test, which is made by the DOC Manager, presents the dispatchers with some scenarios that could happen during the course of a shift or any time with outages. The dispatchers are allowed to use the Distribution Operator's training manual to complete the test. Further, according to TOC Manager Scott, dispatchers follow a set rotation schedule that is in place from year to year, and if dispatchers want to change their schedules, they work it out amongst themselves, including with scheduling vacation and other time off. However, Sistrunk acknowledged that a provision in the collective-bargaining-agreement provides that dispatchers "shall" submit their requests for vacation to the Employer by March 1, but he never requests that the dispatchers do so.

It appears that the Employer is asserting that dispatchers are statutory supervisors because they assign and direct work to themselves and they recommend themselves for promotions. Primarily I note that, to the extent the Employer's contentions can be viewed as assertions that its dispatchers engage in primary Section 2(11) functions, it seems the Employer has engaged in circular logic by asserting that its dispatchers are supervisors because they supervise themselves. Further, as to the Employer's apparent assertions that the dispatchers assign and direct themselves in work, I find that

the record demonstrates that the dispatchers jobs are highly regulated by the Employer. In fact, the discipline issued to the dispatchers particularly reflects the minute degree to which the Employer does review dispatcher work. As to the assignment of overtime to themselves, the record is clear that dispatchers may hold themselves over only in two situations: 1) in major storm outage situations and 2) to provide shift coverage when a dispatcher from the next shift has called in to report s/he will be late or absent. In the second situation, the Employer requires that the desks be manned by an established number of supervisors. Thus, to maintain this pre-established number, the dispatchers can either hold themselves over or they can call in a replacement from the Employer's established list. In either of the two situations causing overtime, the Employer's stipulated supervisors are informed that the overtime action has been taken.

Regarding the dispatchers ability to set their own schedules, by the Employer's own admission, the dispatchers follow a set rotation schedule. It does appear that the Employer has worked out a system similar to many other employers that, if an employee wants to change their schedule, they can as long as they find a replacement. However, this simply demonstrates that the dispatchers are fungible and possess the same level of training and skill. As to the dispatchers' ability to effectively recommend dispatcher trainees for promotion, I find that the Employer's stipulated supervisors engage in their own, independent analysis of dispatcher trainees before promoting them to be full competency level dispatchers and that such promotions are not based on the dispatchers having effectively recommended the trainee for promotion. For the reasons cited above, I am not persuaded that the dispatchers supervise themselves but instead are skilled employees able to work independently with the guidelines and various control systems the Employer has put into place. Accordingly, I find that the dispatchers do not possess any of the primary indicia of supervisory status.

Additionally, the Employer contends that the evaluation system for merit raise and bonus plans and the compensation of its dispatchers is comparable to that of other supervisory employees. The cumulative record reflects that, prior to November 1, 2006, the Employer's dispatchers were



among the highest paid bargaining unit classifications on a per hour basis, and they received the same benefits as other bargaining unit employees, including overtime pay. However, on November 1, 2006, the Employer, by its Director of Distribution Operations, Distribution Operations Center (DOC) Manager, and Transmissions Operations Center (TOC) Manager, informed its dispatchers and field employees that the Employer no longer recognized its dispatchers as bargaining unit employees.<sup>2</sup> Additionally, the Employer changed the title of all dispatchers in the DOC to Distribution Operators and told all its dispatchers that they were now in the management ranks. However, the job duties of dispatchers did not change. The Employer informed its dispatchers that as a part of management, their salary would be based on Responsibility Level 17 (RL-17), which increased their salary on average from \$62,964.10 to \$66,930.84, about 6.3 percent. RL-17 is the same pay classification as the Employer's network Operations Coordinators, who are acknowledged statutory supervisors. The Employer also gave its dispatchers in the TOC the same salary, except for the senior dispatcher who was assigned to the higher RL-19 pay classification. The Employer's dispatchers are still compensated for overtime hours but at a straight rate instead of the time and a half they received as bargaining unit employees.

The Employer also informed its dispatchers that they would be moved from the bargaining unit incentive program to the Employer's Exempt Incentive Program (EIP). The EIP, which is performance based, has two parts: one based on the performance of a work group, and the second discretionary part based on the performance of each individual dispatcher. Additionally, the Employer informed its dispatchers that they would be moved from the bargaining unit's negotiated pay increase as contained in the collective bargaining agreement and into the management PP&R performance review process, which is a performance based merit program under which management individuals are given an increase in salary based on the individual's performance for the year.

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<sup>2</sup> Prior to the change, the Employer notified the Union that it was going to remove dispatchers from the bargaining unit and that it was not going to bargain with the Union on behalf of the dispatchers.

Notwithstanding the Employer's treatment of its dispatchers after November 1, 2006, it is well established that where, as here, putative supervisors are not shown to possess any of the primary indicia of supervisory status enumerated in Section 2(11), secondary indicia are insufficient to establish supervisory status. See, e.g. *Ken-Crest Servs*, 335 NLRB 777, 779 (2001). Indeed, the cumulative record reflects that the Employer's dispatchers cannot hire, fire, suspend, layoff, recall, or transfer employees. Dispatchers, who do not attend supervisory meetings, may inform field supervisors of any misconduct by field employees<sup>3</sup>, but dispatchers cannot discipline, or even recommend discipline, for field employees. Dispatchers do not perform appraisals of field employees and do not reward field employees. Dispatchers cannot grant vacation or leave time or adjust grievances. Thus, based upon my determination above that the Employer's dispatchers do not exercise independent judgment in assigning or responsibly directing the field employees, I do not find that the Employer's assertion of these secondary indicia establish that its dispatchers are statutory supervisors.

#### **IV. CONCLUSION**

Based on the record as a whole and careful consideration of arguments made by the parties in their briefs, I find that the Employer has not met its burden of demonstrating that its dispatchers exercise independent judgment in performing any of the Section 2(11) supervisory functions. Specifically, utilizing the standards the Board set forth in *Oakwood Healthcare*, I find that the Employer's dispatchers do not possess authority to "assign" or "responsibly to direct" field employees with independent judgment, and therefore, are not statutory supervisors. Accordingly, I shall dismiss this petition to clarify the certified bargaining unit to exclude dispatchers.

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<sup>3</sup> The term field employees is used herein to refer to the job classifications in the Transmission Operations Group (TOG) that are supervised by the Operations Coordinators and Substation Maintenance Supervisors and the job classifications in the Networks that are supervised by the Network Manager and Operations Coordinators. In the TOG, the job classifications are SC&M Mechanics, Senior Mechanics, System Relay Men, and Relay Men. In the Networks, the job classifications are Senior Lineman, Lineman, Lineman Trainee, Serviceman, Troublemaker, Storekeeper, Senior Cable Splicer, Cable Splicer, and Cable Splicer Trainee.

## V. ORDER

**IT IS HEREBY ORDERED** that the petition filed herein be dismissed.

## VI. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14<sup>th</sup> Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington, D.C., by **February 21, 2007**. The request may not be filed by facsimile.

**E-filing:** A request for review also may be filed electronically by using the e-filing system on the Agency's Website. In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. Guidance for E-filing can also be found on the National Labor Relations Board web site at [www.nlr.gov](http://www.nlr.gov). On the home page select the **E-Gov** tab and click on **E-Filing**. Then select the NLRB office for which you wish to E-File your documents. Detailed E-filing instructions explaining how to file the documents electronically will be displayed.

**SIGNED AND DATED** at New Orleans, Louisiana on this 7<sup>th</sup> day of February, 2007.

/s/ M. Kathleen McKinney  
**M. Kathleen McKinney**  
Acting Regional Director  
National Labor Relations Board  
Region 15

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